



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148384

PRELIMINARY RECITALS

Pursuant to a petition filed March 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on May 09, 2013, at Port Washington, Wisconsin.

The issue for determination is whether the evidence offered on behalf of Petitioner demonstrates that a prior authorization request for speech language therapy meets the standards necessary for Wisconsin Medicaid approval.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Theresa Walske, MS, CCC-SLP; by written submission
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.
2. Petitioner timely filed this appeal to contest a denial of a prior authorization (PA) request filed on her behalf seeking Medicaid payment for speech language therapy.

3. The PA noted at Finding # 2 was filed on or about January 17, 2013 by Petitioner's provider, Rehab Resources, Inc. It sought Medicaid payment for 12 speech language therapy sessions to be provided at a frequency of once per week for twelve weeks for the summer of 2013, oral function therapy at a frequency of once per week for 26 weeks and the corresponding evaluations. The total cost was noted to be \$6318.00. Per agency records this is the 7th PA filed on behalf of Petitioner.
4. This PA was approved in part and denied in part. The 26 sessions of oral function therapy were approved as was the oral function evaluation. The speech therapy and the speech evaluation were denied.
5. Petitioner is 5 years of age (DOB [REDACTED]/2008). Petitioner's diagnosis is autistic disorder and oral phase dysphagia [swallowing difficulty]. Petitioner has global delays in gross-motor, fine motor and speech/language skills. Petitioner attends a school program in the Grafton School District 3 days per week at 2½ hours per day during the 2012-13 school year. She is expected to attend 4 days in the 2013-14 school year. She did receive speech therapy sessions in school. There is no speech language therapy for Petitioner during the summer of 2013 in the school system. Petitioner receives 35 hours per week of in-home autism services.
6. A large amount of new information was submitted by the provider at the hearing, it was provided to the Department to see if it would affect the Department decision. It did not.

DISCUSSION

When determining whether to approve therapy, the DHCAA must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS 107.02(3)(e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible.

Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met.

The Department's initial rationales for the denial of this PA were that the request does not meet the Medicaid standards necessary for approval and that the request is premature. Further, the Department noted that a request for services in January for June is tantamount to an admission that a functional progress can be made over the period of the rest of the school year coupled with 35 hours a week it wanted some services. Additionally, the Department noted that if provider's documentation that Petitioner was making progress with respect to speech language communication in January the goals established January will not be applicable in the summer of 2013.

The new information did not change the department decision. The Department analysis of the new information is detailed in a letter dated June 25, 2013. I am not going to reproduce that letter here but, in short, the Department concluded that there is no clinical reason provided for the request, that the in-home autism provider(s) can work on sound production and that there is a lack of documented progress.

The provider also submitted a large volume of information that I will not reproduce here. In brief, the provider argues need but the Department is correct - without clinical justification or demonstration of progress. I am, however, making one slight modification to the Department denial of the SLT; specifically I am approving two sessions for the sole purpose of establishing a program that the in home autism providers can use to reinforce sound production for the remainder of July and August 2013.

NOTE: Petitioner's family should be aware that Petitioner's provider will not receive a copy of this Decision. If the family wishes the provider to have a copy, the family must provide a copy to the provider.

CONCLUSIONS OF LAW

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that this prior authorization request meets the Medicaid standards necessary for full approval but does demonstrate that some coordination of services should have been implemented between the school, provider and the in-home autism program prior to the commencement of the standard school year summer vacation which commenced in June 2013.

THEREFORE, it is

ORDERED

That Petitioner's provider, Rehab Resources, is hereby authorized to submit its claim for 2 speech language therapy sessions during the period of July and August 2013 for the purpose of establishing and implementing a home program to be used by the in home autism program and/or Petitioner's family. The provider should submit a new prior authorization request and a copy of this Decision to ForwardHealth for payment.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

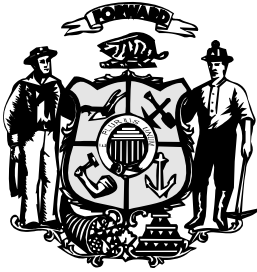
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of July, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



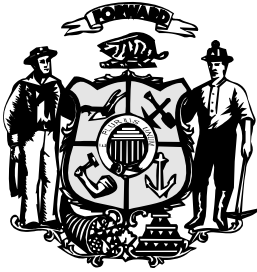
State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 3, 2013.

Division of Health Care Access And Accountability



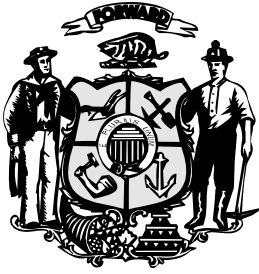
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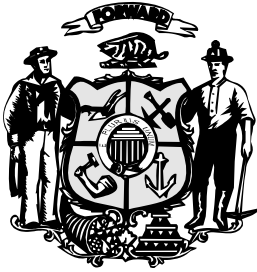
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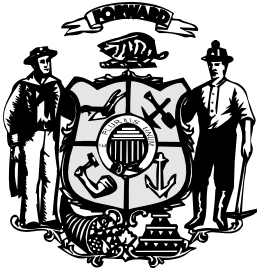
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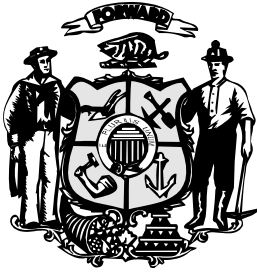
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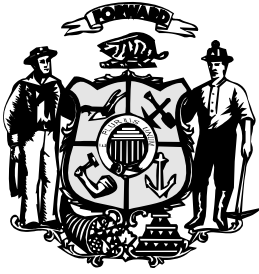
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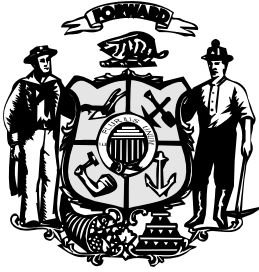
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